

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 4, p. 355, on August 22, 2012, as **ARC 0294C**.

Pursuant to 2012 Iowa Acts, Senate File 2342, section 13, rule 701—225.7(423) provides for the taxability of certain inputs used in taxable vehicle wash and wax services. Under this new rule, for bills received on or after May 25, 2012, sales of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) are exempt from tax.

This amendment is identical to that published under Notice of Intended Action.

This amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

After analysis and review of this rule making, the Department has determined the legislation that gives rise to this rule will have a positive impact on some small businesses, specifically those businesses that provide taxable vehicle wash and wax services, by allowing the businesses to purchase certain enumerated inputs used in providing vehicle wash and wax services exempt from sales tax.

This amendment is intended to implement 2011 Iowa Code Supplement section 423.3 as amended by 2012 Iowa Acts, Senate File 2342, section 13.

This amendment will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Adopt the following new rule 701—225.7(423):

701—225.7(423) Certain inputs used in taxable vehicle wash and wax services. On or after May 25, 2012, sales of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) are exempt from tax. This rule applies to bills received or sales occurring, as the case may be, on or after May 25, 2012.

225.7(1) Definitions. For the purposes of this rule, the following definitions apply:

“*Chemical*” means a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“*Reagent*” means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

“*Retailer*” or “*supplier*” means and includes every person engaged in the business of selling tangible personal property or taxable services at retail or the furnishing of gas, electricity, water, pay television, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this rule to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom the salespersons, representatives,

truckers, peddlers, or canvassers operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this rule. “Retailer” includes a seller obligated to collect sales or use tax.

“*Secondary vehicle wash and wax facility*” means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). Examples of “secondary vehicle wash and wax facilities” include, but are not limited to, vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a “secondary vehicle wash and wax facility” unless it can prove otherwise.

“*Solvent*” means a substance in which another substance can be dissolved and which is primarily used for that purpose.

“*Sorbent*” means a solid material, often in a powder or granular form, which acts to retain another substance, usually on the sorbent’s surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

“*Stand-alone vehicle wash and wax facility*” means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a “stand-alone vehicle wash and wax facility” although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes which are sold out of vending machines.

“*Vehicle*” means any self-propelled motor vehicle designed primarily for carrying passengers (nine or fewer) excluding motorcycles and motorized bicycles; any pickup truck designed to carry both passengers and cargo; or any vehicle which is commonly on a highway and propelled by any power other than muscular power. Nonexclusive examples of a vehicle are motorcycles, motorized bicycles, pickup trucks, tractors, and trailers.

“*Vehicle wash and wax facility*” means any retailer that provides vehicle wash and wax services.

“*Vehicle wash and wax services*” or “*vehicle wash and wax*” means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

“*Water*” means water directly consumed or used in providing the taxable vehicle wash and wax service. “Water” does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services as these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.7(2) *Purchases made by a stand-alone vehicle wash and wax facility.* Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the suppliers of such items with an exemption certificate. See 701—paragraph 15.3(2) “g.”

225.7(3) *Purchases made by a secondary vehicle wash and wax facility.*

a. *Sales price of electricity and water.* The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting; water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the suppliers. See 701—paragraph 15.3(2) “g.” The supplier should not charge tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity which is measured by the meter which separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water supplier.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service facility’s primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water supplier.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider’s primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation (See *Dial Corp. v. Iowa Dep’t of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001)). The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages (See *id.* and Iowa Code section 421.60(6)) and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water supplier in writing of the percentage of exempt usage, if required.

(3) Credit. A supplier of electricity or water that sells electricity or water to vehicle wash and wax facilities may bill customers for sales tax even if the facility qualifies for the exemption from sales tax under this rule if the supplier cannot adjust its billing process in time to accommodate this exemption.

Subsequently, the electricity or water supplier shall provide a credit for tax collected from a vehicle wash and wax facility, and the credit is to appear on the first possible billing date after May 25, 2012.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department at the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate which indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE A: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is "consumed" in performance of the automobile dealership's business operations. See 701—paragraph 18.3(1) "c."

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water suppliers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water suppliers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership's returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE B: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With

the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The automobile dealership shall furnish to the electricity or water supplier an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE C: Same facts as Example B, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement 2011 Iowa Code Supplement section 423.3 as amended by 2012 Iowa Acts, Senate File 2342, section 13.

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